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SUBJECT: Guangdong Releases Labor Contract Law Implementation Guidelines

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¶1. (SBU) Summary: Since it went into effect on January 1, Guangdong businesspeople, domestic and foreign, have struggled to be in compliance in the absence of implementing guidelines. No more. Or to be more precise, some, if not all of the ambiguity, was removed on July 7 when the Guangdong High Court and the Guangdong Labor Dispute Arbitration Commission jointly published implementation regulations. Highlights of the new guidelines include stipulation that it is illegal to force employees to resign and then rehire them under new contracts, a practice that many firms were accused of using in the weeks before the Labor Contract Law came into force. In addition, the guidelines give employees the power to request that their employers' assets be frozen under certain conditions during labor disputes. Through June 30, nearly 40,000 labor dispute cases have gone to trial in Guangdong, a 157% increase from a year ago. This is the first in a series of cables that will look at the new labor laws, with an eye in particular toward their impact on U.S. business. End Summary.

¶2. (U) The Guangdong High Court and the Guangdong Labor Dispute Arbitration Commission July 7 issued the first guidelines on how the Labor Contract Law and Labor Arbitration Law would be implemented. A dramatic rise in labor disputes had increased the urgency for clearer guidelines. During the first half of the year, 40,000 labor disputes in Guangdong have gone to trial in district, municipal and province-level courts, a 157% increase in cases over the same period last year. The sharp increase is largely due the elimination of the arbitration fee for filing a labor dispute. In the past, parties were required to pay a fee of several hundred RMB to the Guangdong Labor Arbitration Commission before filing, a disincentive for poorer applicants to go forward with a claim.

¶3. (SBU) In general, U.S. businesses operating in south China believe they are already in compliance with the new labor legislations. However, U.S. and other firms have repeatedly expressed to us their concerns about the lack of clarity of the new labor legislation. Many have consulted closely with local labor authorities to ensure that their interpretation of the new laws meets the government's expectations. They have stated that even

labor officials admit that implementation procedures have not been clear. However, in the week since the guidelines were released, human resources executives of U.S. firms have not yet had time to thoroughly study them and do not yet know if they fully address their concerns.

¶4. (U) The new implementation guidelines cover 31 different articles. Of these, the local media has focused on 9 articles in their reporting which stipulate the following:

--It is illegal for an employer to force workers to resign, and then re-hire them and have them sign new labor contracts. (Media reports indicated that this practice was used many by companies in the Pearl River Delta in the weeks before the Labor Contract Law came into force. The practice was widely criticized.)

-- It is also illegal for an employer to register two company names and sign consecutive labor contracts with employees under different names (two years using one name and two years using another name).

--During labor arbitration, if the employer attempts to transfer company assets in order to avoid paying compensation, the worker can apply to the court to freeze the assets of the employer.

--Foreigners and Hong Kong/Macau/Taiwan residents' labor contracts with mainland employers shall be deemed invalid if they do not have a Foreigners Employment Permit or a Hong Kong/Macau/Taiwan Residents Employment Permit. However, the employer must still pay them in accordance with their labor contracts for the time they have worked.

--If an employee claims that he has worked overtime and the employer denies it, it is the employer's responsibility to provide evidence

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that the employee did not work overtime. The employee does not have to provide evidence that he worked overtime, unless the work occurred more than 2 years ago.

--An employer does not need to pay compensation to workers if the employer terminates the employment relationship within one month.

--Disputes over housing funds shall not be regarded as labor disputes; the Labor Arbitration Law is not applicable in this instance.

--The term "days" in the Labor Arbitration Law means "working days."

--In construction projects where disputes arise between a construction worker and a contractor who illegally hires the construction worker, the company that hires the contractor can be listed as a secondary defendant in a litigation case.

--In labor arbitration cases, arbitration commissions shall follow the principles of equal protection of the legal interests and rights of workers and employers.

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